

Rbrendel.txt

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1           IN THE UNITED STATES DISTRICT COURT FOR THE  
2                   WESTERN DISTRICT OF PENNSYLVANIA  
3       CONSOLIDATION COAL COMPANY,       )  
4                   Plaintiff,                )  
5                   vs.                        )  
6       UNITED STATES DEPARTMENT OF       )  
7       THE INTERIOR, NATIONAL PARK       )  
8       SERVICE,                            )  
9       and                                    )  
10      CAROL D. SCHULL, individually       )  
11      and in her capacity as the           )  
12      Keeper of the National Register     )  
13      of Historic Places,                 )  
14      and                                    )  
15      ROY BRENDL and DIANE BRENDL,       )  
16                   Defendants.             )

Civil Action  
No. 00-2120

14

15

16

DEPOSITION OF: ROY BRENDL

17

18

19

DATE: February 9, 2006  
Thursday, 9:30 a.m.

20

21

LOCATION: Thorp Reed & Armstrong  
14th Floor  
One Oxford Centre  
Pittsburgh, PA 15219

22

23

TAKEN BY: Consolidation Coal Company

24

25

REPORTED BY: Keith G. Shreckengast, RPR  
Notary Public  
AKF Reference No. KS92308

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1           DEPOSITION OF ROY BRENDL,  
2       a witness, called by the Plaintiff for examination,  
3       in accordance with the Federal Rules of Civil  
4       Procedure, taken by and before Keith G. Shreckengast,  
5       RPR, a Court Reporter and Notary Public in and for  
6       the Commonwealth of Pennsylvania, at the offices of  
7                   Page 1

EXHIBIT

16

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22 you just mentioned?

23 A. Yes.

24 Q. Did you use it for any other purposes before  
25 the mining?

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1 A. No.

2 Q. Is that building damaged?

3 A. That building leans a little bit, but that  
4 particular building is up off the floor. I had  
5 rebuilt that floor myself. So it held up  
6 pretty good. There's some minor damage to the  
7 bottom of it.

8 Q. You rebuilt the floor since the mining?

9 A. No, before, before the mining, exactly the way  
10 the Major built it with raw cut lumber.

11 Q. Anything else that was damaged by this mining  
12 that you're making the claim for \$3 million  
13 for?

14 A. I'm not making a claim for \$3 million.

15 MR. HOOK: Objection, that's  
16 misrepresenting the record. The \$3 million was  
17 offered prior to the mining at a negotiating  
18 session. That's what we've been talking about  
19 for over an hour now. At no time has he talked  
20 about any estimate placed on the damages post  
21 mining.

22 Q. What number did you put on repairing the  
23 storage shed at the time you put the \$3 million  
24 number together?

25 A. I can't recall.

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1 MR. HOOK: We're going to take a  
2 break here.

3 - - - -

4 (There was a brief pause in the proceedings.)

5 - - - -

6 BY MR. KATARINCIC:

7 Q. We were talking that before the mining took  
8 place you put a number of \$3 million on  
9 anticipated damages, you recall that?

10 A. Uh-huh.

11 Q. Have you since the mining took place put a  
12 similar \$3 million number on for the damages to  
13 the structures, including the house?

14 A. That would be -- Mr. Hook has all that  
15 information on the Glance report. We just  
16 talked about the Glance report.

17 Q. Well, do you know if there's been a claim made  
18 against my client by you for \$3 million for  
19 damage to the house and the structures and so  
20 forth?

21 A. I'm not sure exactly what the number is. The  
22 numbers, my lawyer handles all that number  
23 stuff.

24 Q. This is a Complaint that was shown to  
25 Mrs. Brendel yesterday, Exhibit 12 A. Would

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1 you look at that, please, and tell me whether  
2 you've ever seen it. I'm sorry, I called it a  
3 Complaint, it's the Second Amended Answer,

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- 4 Counterclaim and Third Party Complaint, that's  
5 the title to it.
- 6 A. Tell you the truth, I can't tell one of these  
7 from another. If I could ask my attorney, I'm  
8 sure he gives me all this stuff.
- 9 Q. I'm simply asking you have you seen it before  
10 today?
- 11 A. If it's the one I got in the mail, I guess it  
12 is. It looks like -- yeah, it looks like the  
13 same thing.
- 14 Q. Same thing as what, that you were given to  
15 review?
- 16 A. I think.
- 17 Q. You are the Counterclaimant here, Roy Brendel?
- 18 A. Yes.
- 19 Q. On page 16, paragraph it looks like it's 3,  
20 damages.
- 21 A. Uh-huh.
- 22 Q. Other damages. Do you see that 3 A, it's a  
23 little below the middle of the page?
- 24 A. Other damages, yes.
- 25 Q. would you read paragraph A, sir, out loud?

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- 1 A. It says compensatory damages in excess of 1,800  
2 for the --
- 3 Q. \$1,800,000?
- 4 A. For the damage to the Brendels' home, and in  
5 excess of \$1,200,000 for the damage to the  
6 Brendels' other buildings and property, in a  
7 total sum to be determined at trial.
- 8 Q. Those two numbers, if you add them up, are \$3
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9 million?

10 A. Yes.

11 Q. So would it be correct to say that in this  
12 lawsuit you are claiming \$3 million for damage  
13 to the house, your home, and the other  
14 buildings and property?

15 MR. HOOK: No, that's not --  
16 objection, that's just a misrepresentation of  
17 the statement in the document. I'm not going  
18 to permit you to distort that. It says quite  
19 clearly the damages are in excess of  
20 \$1.8 million for damages to the house, and in  
21 excess of 1.2 for the rest of the property.  
22 And this is a total sum to be determined at  
23 trial. That's what it says, Mr. Katarincic,  
24 not what you're trying to twist it to.

25 MR. KATARINCIC: Mr. Hook, I really

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1 feel sorry for you.

2 BY MR. KATARINCIC:

3 Q. Let's go back to A. The two numbers set forth  
4 come to \$3 million, do they not?

5 A. Yes, they do.

6 Q. And you and I previously, in enumerating what  
7 went into the \$3 million, included all of the  
8 structures and so forth --

9 MR. HOOK: Objection, Mr. Katarincic.  
10 Again you are misconstruing.

11 MR. KATARINCIC: I didn't finish my  
12 question.

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13 MR. HOOK: Finish it, then I'll  
14 object.  
15 MR. KATARINCIC: Please try to  
16 contain yourself, Mr. Hook.  
17 MR. HOOK: It's very hard with your  
18 type of conduct, Mr. Katarincic.  
19 MR. KATARINCIC: If you need another  
20 break, I'll be happy to give it to you.  
21 BY MR. KATARINCIC:  
22 Q. The amount of the \$3 million which was given to  
23 Mr. Jenkins and Mr. Kramer in Hook's office,  
24 that covered what, all your damages including  
25 the buildings and land and wheat and hay and so

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1 forth?  
2 A. That was an estimate at that time.  
3 Q. Of all physical damage?  
4 A. Yes.  
5 Q. Now what do you understand the \$3 million is  
6 for here as set forth in paragraph 3 at page 16  
7 of Exhibit 12 A?  
8 A. It says to be determined at trial.  
9 Q. what else does it say? Are you saying that the  
10 amount could be less \$3 million; is that what  
11 you intend to say here?  
12 MR. HOOK: Your Honor --  
13 A. It says in excess.  
14 Q. So you think it could be more than 3 million?  
15 A. I have to rely on my lawyer.  
16 MR. HOOK: I object to this line of  
17 questioning. The statement says what it says.

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18 You don't need to ask this witness what it says  
19 or what it might say.

20 Q. Tell me what makes up the demand for 1.8  
21 million and 1.2 million as set forth in  
22 paragraph 3 on page 16.

23 MR. HOOK: If you know.

24 Q. And don't take that as a clue for an answer.  
25 That's what he intends it to be.

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1 A. It says to be determined at trial.

2 Q. But what do you understand constitutes --

3 A. To be determined at trial. That's exactly what  
4 it is.

5 Q. When you use the word 1.8 here, that number,  
6 what did you understand it to be?

7 A. I don't know what you're talking about.

8 Q. What is included in the 1.8 million? When you  
9 made a claim against Consol for 1.8 million and  
10 1.2 million, tell me exactly what was included  
11 within those numbers.

12 A. Just what it says here, in excess.

13 Q. Of? What is it for? What do they represent,  
14 damage to what?

15 A. This statement says compensatory damages in  
16 excess of 1,800,000 for the damages to the  
17 Brendels' home, and in excess of 1,200,000 for  
18 the damage to the Brendels' other buildings and  
19 property in a total sum to be determined at  
20 trial.

21 Q. What's the property you're referring to there

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22       in that paragraph? Do you know, sir?

23 A.     No, I don't follow you.

24 Q.     what is included in the word property

25       use it in paragraph 3 A?



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1 A. I don't know. I don't know what you're talking  
2 about.  
3 Q. You don't understand my question, or you don't  
4 know what's included in the word?  
5 A. Yeah, I don't understand your question.  
6 Q. Well, you included the 1,800,000 damage to the  
7 Brendels' home, and in excess of 1,200,000 for  
8 damage to other buildings?  
9 A. Yes.  
10 MR. HOOK: That's not what it says,  
11 it says other buildings and property.  
12 MR. KATARINCIC: I'm asking him what  
13 property means. Don't interrupt him.  
14 BY MR. KATARINCIC:  
15 Q. You say other buildings and property. What is  
16 the property you're talking about?  
17 A. I would assume it meant my property.  
18 Q. What piece of your property? Describe it in  
19 detail.  
20 A. 133 acres.  
21 Q. So it would be damage to the land itself?  
22 A. I don't know.  
23 Q. You don't know what it means?  
24 A. No, I don't know.  
25 Q. Okay, this is Roy Brendel Exhibit 13.